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**VIA HAND DELIVERY**

January 27, 2003

**EX PARTE**

Marlene Dortch  
Secretary  
Federal Communications Commission  
The Portals  
TW-A325  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

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JAN 27 2003

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY


Re: Oral *Ex Parte* Presentation  
CC Docket Nos. 01-338, 96-98, 98-147

Dear Ms. Dortch:

On January 24, 2003, the undersigned had a brief telephone call concerning the above-referenced proceeding with Matthew Brill, Senior Legal Advisor to Commissioner Abernathy. During the discussion, EarthLink reiterated points previously in the above-referenced dockets regarding line sharing as an unbundled network element (UNE). EarthLink expressed its support for the continuation of line sharing as a UNE. With regard to the issue on remand from *USTA v. FCC*, EarthLink explained that, since CLECs have no access to cable facilities, the FCC's data regarding cable modem service would seemingly have no relevance to the UNE necessary and impair analysis.

Pursuant to Section 1.1206(b)(2) of the Commission's Rules, an original and **six** copies of this Notice are being provided to you for inclusion in the public record in the above-captioned proceedings. Should you have any questions, please contact me.

Sincerely,

  
Mark J. O'Connor  
Counsel for EarthLink, Inc.

CC: Matthew Brill, Esq.